

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 104—Sales/Use Tax—Registration**

PROPOSED AMENDMENT

12 CSR 10-104.030 Filing Requirements. The director proposes to amend the purpose, sections 1 thru 4, and the authority.

PURPOSE: This amendment adds definitions of use tax and how the returns associated with use tax should be filed with the department.

PURPOSE: This rule provides general guidance for determining a taxpayer's filing frequency and the taxpayer's obligation to file a return and remit tax on the due date according to sections 144.080, 144.081, 144.090, 144.100, 144.140, 144.160, 144.170, 144.250, and **144.655 RSMo**.

(1) In general, sellers of tangible personal property and taxable services are required to file and remit sales tax on an annual, quarterly or monthly basis. Some sellers who file sales tax returns on a monthly basis may be required to remit sales tax on a quarter-monthly basis. **Taxpayers may also be required to file and pay use tax on an annual, quarterly or monthly basis.** Failure to file or remit taxes when due results in interest and additions to tax on the unpaid amount.

(2) Definitions.

(A) Calendar month—the first day to the last day of any of the twelve (12) months of the Gregorian calendar.

(B) Calendar quarter—the period of three (3) consecutive calendar months ending on March 31, June 30, September 30 or December 31.

(C) Consumer's use tax – use tax paid by the purchaser directly to the department when the seller does not collect sales or use tax on the sale.

(D) Engage in business in this state – conducting business, as that term is defined in section 144.010.1(2), RSMo, in this state.

(E [C]) Quarter-month—

1. The first seven (7) days of a calendar month;
2. The eighth through the fifteenth day of a calendar month;
3. The sixteenth through the twenty-second day of a calendar month; and
4. The twenty-third day through the last day of a calendar month.

(F) Vendor's use tax – use tax collected from the purchaser on a sale at retail and remitted to the department by the seller.

(3) Basic Application.

(A) Every licensed taxpayer must file a return and remit tax due by the statutory due date. The taxpayer must file a sales tax return even if no sales were made

during the reporting period. The taxpayer is responsible for obtaining the necessary forms for filing. Failure to obtain tax forms does not relieve the taxpayer from filing.

(B) The taxpayer's **sales tax** filing frequency is determined by the amount of state sales tax collected by the taxpayer for all business locations during the previous calendar year. The filing frequency of a new business is based on the estimated taxable sales for the first year of operation. Local, conservation or parks and soils taxes are not considered in determining filing frequency.

1. If state tax collections equal or exceed five hundred dollars (\$500) per calendar month, the taxpayer must file and remit taxes on a monthly basis.

2. If state tax collections are less than five hundred dollars (\$500) per calendar month but equal or exceed forty-five dollars (\$45) in a calendar quarter; the taxpayer must file and remit taxes on a quarterly basis.

3. If state tax collections are less than forty-five dollars (\$45) per quarter, the taxpayer must file and remit taxes on an annual basis.

(C) A monthly return is due on the twentieth day of the following month, except for the last month of a quarter. A quarterly return and a monthly return filed for the last months of a quarter are due on the last day of the following month. An annual return is due on January 31 following the calendar year. If the due date falls on a Saturday, Sunday or state of Missouri holiday the return is due on the next business day.

(D) The United States Postal Service postmark date determines the date the return is filed. If the postmark date is on or before the due date, it is timely. If the postmark is after the due date, the return is late. If a return contains both a taxpayer's metered postal impression and the U.S. Postal Service postmark, the date of the U.S. Postal Service postmark date determines the date the return is filed. If the return is mailed by registered mail, the date of registration determines the date the return is filed.

(E) A taxpayer filing a **sales or vendor's use tax** return and remitting the tax due on or before the due date is permitted a two percent (2%) timely payment allowance.

(F) A taxpayer failing to file a return by the due date will be assessed additions to tax of five percent (5%) on the unpaid amount for each month a return is late, up to a maximum of twenty-five percent (25%). A taxpayer failing to pay a return by the due date will be assessed additions of five percent (5%) on the unpaid amount. If a taxpayer both fails to timely file and fails to timely pay, the additions for failing to timely file applies. A taxpayer that fails to pay the proper amount of tax by the due date must pay interest on the unpaid amount at a rate determined pursuant to section 32.065, RSMo.

(G) The department may extend the time to file or pay a return for up to sixty (60) days. In order to obtain an extension, the taxpayer must obtain approval from the department prior to the date due. Extensions will only be granted for good cause. If the department approves an extension to file or pay, the taxpayer is not permitted a two percent (2%) timely payment allowance. Interest also accrues on any amount not paid by the due date.

(H) The department may require a taxpayer to remit state sales tax on a quarter-monthly basis if the taxpayer's state sales tax is fifteen thousand dollars (\$15,000) or more per month in each of at least six (6) months of the prior twelve (12) months. A quarter-monthly taxpayer must remit the tax within three (3) banking days after the end of each quarter-monthly period. The postmark date or registration date of the remittance

will determine timeliness of the quarter-monthly payment. A quarter-monthly taxpayer must file a monthly return and remit any unpaid amounts.

(I) A taxpayer failing to remit a quarter-monthly payment is assessed a five percent (5%) penalty on the underpayment. A penalty will not be assessed if the quarter-monthly remittances are at least:

1. Ninety percent (90%) of the state tax due for the month; or
2. Twenty-five percent (25%) of the average monthly state tax liability of the taxpayer for the previous calendar year. The department excludes the highest and lowest monthly liability when calculating the average monthly liability.

(J) If a penalty is due, the underpayment amount is calculated as the difference between any timely remittance and the lesser of the two (2) amounts above. The penalty will not be imposed in the first two (2) months the seller is obligated to remit quarter-monthly tax or if the taxpayer can demonstrate reasonable cause.

(K) Taxpayers that engage in business in this state and are only required to file and pay consumer's use tax must file a use tax return and pay the tax due quarterly. The first quarterly return is due for the calendar quarter for which the taxable purchases exceed two thousand dollars (\$2,000) for the calendar year.

(L) Taxpayers that are required to file a return for and pay consumer's use tax and vendor's use tax, but not sales tax, must file a use tax return as follows:

1. If vendor's state use tax collections equal or exceed five hundred dollars (\$500) per calendar month, the taxpayer must file a return and remit vendor's and consumer's use taxes on a monthly basis.

2. If vendor's state use tax collections are less than five hundred dollars (\$500) per calendar month but equal or exceed forty-five dollars (\$45) in a calendar quarter, the taxpayer must file a return and remit vendor's and consumer's use taxes on a quarterly basis.

3. If vendor's state use tax collections are less than forty-five dollars (\$45) per calendar quarter, the taxpayer must file a return and remit vendor's and consumer's use taxes on an annual basis. The vendor's use tax return is due by January 31 for the preceding calendar year. The consumer's use tax return is due by April 15 for the preceding calendar year.

(M) Taxpayers that are required to file a return for and pay consumer's use tax and are also required to file a sales tax return monthly or quarterly must file a consumer's use tax return quarterly. The first quarterly consumer's use tax return is due for the calendar quarter for which the taxable purchases exceed two thousand dollars (\$2,000) for the calendar year. Taxpayers that are required to file a return for and pay consumer's use tax and are also required to file a sales tax return annually must file a use tax return annually by April 15 for the preceding calendar year.

(N) Taxpayers that do not engage in business in this state and are only required to file a return for and pay consumer's use tax must file annually by April 15 for the preceding calendar year.

(4) Examples.

(A) A taxpayer's average monthly taxable sales are \$15,000. The Taxpayer's filing frequency is monthly because state tax collections computed as follows exceeds \$500

per calendar month— $\$15,000 \times 4\%$ (state rate) = \$600. Note: Local, conservation or parks and soils taxes are not considered in determining filing frequency.

(B) A taxpayer prepares its February return on March 20 and calculates tax due at \$25,000. When preparing the return the taxpayer takes the 2% timely payment allowance equaling \$500. The postal carrier picks up the return and payment on its last run of the day at 5:00. The post office postmarks all mail from its 5:00 pick-up for the next day. Because the return is postmarked on March 21, the return is 1 day late. The taxpayer loses the 2% timely payment allowance. The \$25,000 is subject to 5% additions to tax. Interest accrues on \$500 until it is paid to the department.

(C) A taxpayer prepares its February return on March 19. When preparing the return the taxpayer takes the 2% timely payment allowance equaling \$500. The taxpayer sends the return and payment to its mailroom for metering. The taxpayer's mailroom meters the envelope on March 20. The postal carrier picks up the return on its last run of the day at 5:00. The post office postmarks all mail from its 5:00 pick-up for the next day. Because U.S. Postal Service's postmark is March 21, the return is 1 day late.

(D) A taxpayer sends a check for its February tax on March 10. The taxpayer discovers it sent the check without the return and mails the return on April 30. The taxpayer retains its 2% allowance because payment was received before the due date.

(E) A business' average monthly state tax for the previous calendar year equals \$20,000. The estimated **[quarter-monthly]** payment is \$5,000 per quarter-monthly period. The business' actual state tax collections are \$6,000 per quarter-monthly period. If the business remits quarter-monthly payments of \$5,000 timely, no penalty is charged. If the business underpays one of the estimated quarter-monthly payments by \$2,000 (it remits \$3,000), the penalty is 5% of the difference between the amount paid, \$3,000, and the estimate, \$5,000. The penalty is calculated as follows: $\$5,000 - \$3,000 = \$2,000 \times 5\%$ penalty = \$100.

(F) A business elects to make quarter-monthly payments on an actual basis. If the business pays at least 90% of the state tax collections for the month with the quarter-monthly payments, no penalty is charged. If the business does not meet the required 90% state tax collections for the month with the quarter-monthly payments, the penalty is 5% of the difference between the amount paid and the required 90% state tax collections.

(G) A taxpayer has a warehouse facility in Missouri and does not make any retail sales in the state. The taxpayer owes consumer's use tax on purchases of \$6,000 made in June. The taxpayer makes no other taxable purchases during the calendar year. The taxpayer must file a return and remit use tax on the purchases by July 31 on that calendar year, which is the due date for the second quarter.

(H) Same facts as (G), except the taxpayer owes consumer's use tax of \$100 on purchases of less than \$2,000 made in March. The taxpayer is not required to file a return and remit the tax until July 31, the due date for the second quarter, which is the quarter when its total purchases for the calendar year first exceeded \$2,000.

(I) Same facts as (G), except the taxpayer also owes consumer's use tax of \$40 on purchases made in August. The taxpayer must file another return and remit the \$40 use tax by October 31.

(J) A taxpayer owes consumer's use tax on purchases of less than \$2,000 made in January. The taxpayer also owes vendor's use tax of \$5,000 on sales made in January. The taxpayer must file a return and remit both consumer's and vendor's use tax by February 20.

(K) A taxpayer is a quarter-monthly sales tax filer. The taxpayer does not collect and remit any vendor's use tax. The taxpayer owes consumer's use tax on purchases made in January, April and September. Total purchases for the calendar year do not exceed \$2,000 until the September purchase. The taxpayer is first required to file a use tax return and remit tax on all purchases in the calendar year by October 31.

(L) An individual purchases for his home a plasma television for \$10,000 from an out-of-state vendor that does not collect sales or vendor's use tax on the sale. The individual must file a return and remit consumer's use tax by April 15 of the calendar year following the purchase.

AUTHORITY: sections 144.270 and 144.705, RSMo [1994] 2000. Original rule filed June 29, 2000, effective Dec. 30, 2000.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Revenue approximately three hundred seventy-four thousand nine hundred sixteen dollars and seventy cents (\$374,916.70) with that cost recurring annually over the life of the rule.

PRIVATE COST: This proposed rule is estimated to cost private entities approximately four million thirty-eight thousand six hundred dollars (\$4,038,600) with that cost recurring annually over the life of the rule.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name:	12 CSR 10-104.030 Sales/Use Tax– Registration Filing Requirements
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimate Cost of Compliance in the Aggregate.
Missouri Department of Revenue	\$343,286.19

III. WORKSHEET

It costs the Department of Revenue \$2.25 to process a typical use tax return. Based on an estimated returns filed by use tax filers in a given year, the costs to process are $129,298 \times \$2.25 = \$290,920.50$. The Department of Revenue's costs to print and mail returns to use tax filers are \$.405 per return. The calculation for these costs are $129,298 \times \$.405 = \$52,365.69$.

IV. ASSUMPTIONS

The costs assume no postal discounts for mailing are realized. It also assumes an annual salary for a Tax Processing Technician of \$23,006.

**FISCAL NOTE
PRIVATE COST**

V. RULE NUMBER

Rule Number and Name:	12 CSR 10-104.030 Sales/Use Tax– Registration Filing Requirements
Type of Rulemaking:	Proposed Amendment

VI. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
40,035	Vendors- \$30 in cost to prepare and file a use tax return.	\$3,878,940

VII. WORKSHEET

The Department of Revenue receives approximately 129,298 returns per year from approximately 40,035 use tax filers. The estimated cost to prepare and file a return per business is \$30 per filed return. The cost to all use tax filers to comply is 129,298X \$30= \$3,878,940.

VIII. ASSUMPTIONS

The rule does not change existing practice. The department cannot determine the actual costs of preparing and filing a return. The department assumes for purposes of this fiscal note that it costs \$30 per return. This cost would be incurred as a result of section 144.020.1(2), RSMo., regardless of the contents of this rule. The department assumes every business makes at least one sale or purchase per reporting period.

The figure above is based on the assumption every business makes at least one sale or purchase per reporting period.

Small Business Impact Statement

Proposed Rule 12 CSR 10-104.030 Filing Requirements

1. Rule impacts all out-of-state small businesses that are registered with the state of Missouri to make retail sales of tangible personal property into the state. This rule also impacts all in-state small businesses making out-of-state purchases of tangible personal property for its own use. The rule does not impose any new requirements on small businesses and is a consolidation of already published rules.
2. Any out-of-state establishment who is registered to make retail sales of tangible personal property into this state under this rule will be required to prepare and file a use tax return for each reporting period. Any in-state establishment who is making out-of-state purchases of tangible personal property for its own use under this rule will be required to prepare and file a use tax return for each reporting period.
3. The out-of-state establishment will be required to collect the appropriate amount of tax on its sale of tangible personal property, maintain records of those transactions, report sales on an annual, quarterly or monthly basis and remit the tax at the time of reporting. The in-state establishment will be required to report the appropriate amount of tax on its out-of-state purchases of tangible personal property for its own use, maintain records of those transactions, report purchases a quarterly basis and remit the tax at the time of reporting.
4. There are no monetary costs above and beyond printing and distributing returns and processing those returns as filed by businesses as documented in the public cost fiscal note. There are no monetary benefits to the Department of Revenue from this rule. There are no monetary costs or benefits to other state agencies from this rule.
5. Because the effort to file returns is minimal, no additional efforts have been made to reduce such costs to small businesses.
6. The rule has been distributed on a list serve that is accessible to small business advocates. Also, the rule does not impose any new requirements on small businesses and is consolidation of already published rules.
7. Not applicable.